RSA No. 431 of 2005

28.4.2006 Present: Mr. D.Dadhwal Advocate, for the appellant.

Mr. R.K. Gautam, Sr. Advocate, with Mr. Naveen Bhardwaj, Advocate, for respondent No. 1.

None for respondent No. 2.

Per separate judgment, placed on the file, the appeal is dismissed.

April 28, 2006 (BC) **(Surjit Singh), J.**

HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 431 of 2005

Date of decision : 28.4.2006

Pishori Lal …….. Appellant

Versus

Kultar Singh and another ……. Respondents.

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The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. D.Dadhwal, Advocate.

For the respondents: Mr. R.K. Gautam, Sr. Advocate, with Mr. Naveen Bhardwaj, Advocate, for Respondent No. 1.
None for respondent No. 2.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent Kultar Singh, hereinafter called plaintiff, filed a suit seeking a declaration that he was owner in possession of land measuring 0-03-83 hectares, bearing Khasra Nos. 304, 305, 306, 307, 308, 309 and 310, to the extent of half share and by way of further relief he prayed for issuance of permanent prohibitory injunction, restraining the present appellant Pishori Lal, hereinafter referred to as defendant No. 1 and respondent No. 2 Maina Wanti, hereinafter referred

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Whether reporters of Local Papers may be allowed to see the Judgment?

to as defendant No. 2, from interfering in his possession. It was alleged that the suit land was evacuee property and that two persons, named Laxmi Chand and Sham Lal purchased it from the Central Government and the plaintiff purchased Laxmi Chand's half share in the suit land and thus he became owner to the extent of half share in the suit land.

3. The suit was contested and it was alleged that the defendants had been in possession of the entire suit land since 1948 and that in the year 1967 two deeds of conveyance were also executed in their favour by the Central Government, though mutation had not been attested in their favour. It was also alleged that in the year 1972, when mutation was sought to be attested in favour of Sham Lal and Laxmi Chand, on the basis of a sale deed made in their favour by the Central Government, the defendants objected to the mutation and consequently mutation was not attested in favour of Laxmi Chand or even the present plaintiff, who claimed to have purchased Laxmi Chand's share and the plaintiff's mother, who was also his attorney, acknowledged the possession of the defendants and relinquished ownership by taking a sum of Rs.400/- from the defendants. They further alleged that later on Sham Lal, the owner of the other half share, at the instigation of the plaintiff, instituted a suit claiming ownership of the suit property and that when an appeal, arising out of that suit was pending in the District Court, there had been a compromise and Sham Lal surrendered his half share in favour of the defendants and the matter was decided in favour of the defendants and they were declared owners of Sham Lal's half share in the suit property. The plea of adverse possession was also raised by

the defendants in the alternative. Various preliminary objections were also raised.

4. The trial Court framed large number of issues of facts and law. Ultimately, the trial Court concluded that in the year 1987, vide sale deed Ext. DA, the plaintiff had sold Khasra Nos. 312, 313, 314, 315 and 316, out of the same Khata of which suit land is a part, to the defendants and thus the defendants became co-owners with the plaintiff in the joint Khata. The defendants' plea that the mother of the plaintiff had sold plaintiff's share to them, was rejected. Plea of adverse possession was also rejected, in view of the finding that the defendants were co-owners and the ingredients of adverse possession required to be pleaded and proved by the defendants, were not there. Defendants' plea that the suit property had been sold to them by the Central Government through two deeds in the year 1967, also did not find favour with the trial Court. The trial Court dismissed the suit holding that it was not maintainable, because the plaintiff though a co-owner to the extent of half share with the defendants, was not entitled to the relief of injunction, because the defendants were also co-owners and that his remedy lay in seeking partition.

5. The defendants were aggrieved by the finding of the trial Court declaring the plaintiff as co-owner to the extent of half share in the suit property and so they appealed to the learned District Judge. The learned District Judge has affirmed the finding of the trial Court and dismissed the appeal. At the same time, the learned District Judge has

passed a decree declaring the plaintiff to be co-owner in the suit land to the extent of half share.

6. Main grievance of the appellant / defendant Pishori Lal is that there being no cross appeal by the plaintiff or there being no cross objections by him, declaratory decree could not have been passed in his favour. He also assails the finding of the trial Court, as affirmed by the first appellate Court, that the plaintiff is co-owner to the extent of half share.

7. Learned counsel, representing the appellant, has submitted that the appellant had become owner of half share of Sham Lal in the suit property pursuant to a compromise, arrived at in an appeal arising out of the suit, instituted by Sham Lal and that in addition to that defendant No. 1 had purchased the share of the plaintiff through sale deed Ext. DA in the same Khata of which the suit land is a part and thus he has become owner of the entire suit property, including the alleged half share of the plaintiff.

8. No doubt the trial Court has held that the appellant / defendant had become a co-owner with the plaintiff on account of his having purchased some part of the land comprised in the same Khata as the suit land and this finding has been affirmed by the first Appellate Court, I have no manner of doubt that the finding is bad in law. Admittedly, the land sold to defendant No. 1, i.e. the appellant, is not a share in the joint Khata, but certain specific numbers in joint Khata, i.e. Khasra Nos. 312, 313, 314, 315 and 316, which are different from the suit land. This sale does not make the appellant a co-owner with the

plaintiff in the suit land, which is described by separate numbers, i.e. Khasra Nos. 304, 305, 306, 307, 308, 309 and 310. Though these numbers and the sold numbers, admittedly form part of the same Khata, yet the defendant having acquired ownership of Sham Lal to the extent of half share in the suit land, pursuant to the compromise arrived at in some different litigation between Sham Lal and the appellant / defendant, the ultimate finding, recorded by the trial Court that the defendant is a co-owner with the plaintiff and both of them are having half share each remains and calls for no interference.

9. In view of what has been stated above, plea of the appellant / defendant that he has acquired plaintiff's title by adverse possession, cannot be accepted, in view of the sell-settled legal proposition that a co-owner holds the property on behalf of all unless there is plea of disclaimer.

10. The contention that the first appellate Court could not have passed a decree for declaration, is without merit. The respondent had sought declaration besides relief of injunction. Though the trial Court did not grant the declaration asked for specifically and dismissed the suit, yet the grant of this relief was implied in the finding that the plaintiff was owner to the extent of half share in the suit land. This is what the plaintiff had claimed. What the first appellate Court has done is that it has granted formal decree of declaration specifically based on the finding of the trial Court as also its own finding.

11. In view of what has been stated above, no question of law, much less a substantial question of law, arises. The appeal is, therefore, dismissed.

April 28, 2006 (BC) **(Surjit Singh)**
Judge